

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

CAROL A. SLOCUM
Claimant

V.

U.S.D. 259
Self-Insured Respondent

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Docket No. 1,071,761

ORDER

STATEMENT OF THE CASE

Self-insured respondent requested review of the July 13, 2015, preliminary hearing Order entered by Administrative Law Judge (ALJ) Gary K. Jones. Randall J. Price of Wichita, Kansas, appeared for claimant. Vincent A. Burnett of Wichita, Kansas, appeared for respondent.

The ALJ found claimant sustained an accident arising out of and in the course of her employment, and the accident is the prevailing factor for her injury and current need for medical treatment. The ALJ determined claimant is entitled to temporary total disability benefits beginning October 8, 2014, through such time claimant is released to return to work, has been offered accommodated work, or has attained maximum medical improvement.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the July 7, 2015, Preliminary Hearing and the exhibits, and the transcript of the December 10, 2014, deposition of claimant, together with the pleadings contained in the administrative file.

ISSUES

Respondent argues claimant failed to establish her workplace accident was the prevailing factor for her medical condition; therefore, claimant's injury by accident did not arise out of her employment.

Claimant contends the ALJ's Order should be affirmed, as the credible medical evidence establishes her work accident was the prevailing factor in her injury, medical condition and need for medical treatment.

The issues for the Board's review are:

1. Did claimant sustain a personal injury by accident arising out of and in the course of her employment with respondent?
2. Is claimant's injury by accident the prevailing factor causing her need for medical treatment?

FINDINGS OF FACT

Claimant is currently 65 years of age. Claimant began working for respondent in 2001 as a custodian, cleaning during the lunch periods and cleaning the bathrooms. Claimant explained this position requires her to be on both her knees and feet throughout her shift, and she pushes two cleaning carts while working. Claimant testified she fell while working on October 7, 2014. She explained:

I was in the bathroom. And I had drug in a C3 machine. And I was spraying the bathroom down with soap and water. And I had solution on the toilet as well as the floor. And I went to make a turn. I was having problems with the hose. It kinks up. And I was pulling it. And when I went to make a turn, I felt a pop in my [left] knee, and I fell.¹

Claimant's supervisor was notified and took claimant to the emergency room at Wesley Medical Center, where she was provided a brace and discharged. Dr. Larry Wilkinson examined claimant and ordered x-rays of her left knee the following day. The x-rays were read to show arthritis and minimal subluxation of the knee "more likely chronic considering the arthritis. If it was an acute subluxation from a cruciate tear or a lateral collateral ligament tear we would probably have fluid in the joint, which we don't."² An MRI of claimant's left knee taken October 9, 2014, was read to reveal:

1. Complete tear involving the anterior cruciate ligament [ACL], left knee.
2. Severe multicompartamental hypertrophic/osteoarthritic changes with severe atrophic changes of the medial and lateral meniscus.
3. Small joint effusion.
4. A 5.5cm multilobulated fluid collection within the popliteal fossa most consistent with Baker's cyst.³

¹ P.H. Trans. at 22.

² *Id.*, Cl. Ex. 10 at 17.

³ P.H. Trans., Cl. Ex. 9 at 1.

On October 10, 2014, Dr. Wilkinson opined claimant's preexisting degenerative changes did not contribute to or cause her injury. He wrote, "I believe this is an acute ACL tear therefore the prevailing factor is a work activity since she had a hose in her hand."⁴ Dr. Wilkinson referred claimant to orthopedic specialist Dr. Daniel Prohaska.

Dr. Prohaska examined claimant on October 23, 2014. Claimant complained of left knee pain with stiffness, swelling, and numbness which wakes her from sleep every night. After reviewing claimant's medical records, history, and performing a physical examination, Dr. Prohaska determined claimant had left knee osteoarthritis not related to the work incident. Dr. Prohaska provided an injection to the left knee and recommended any work restrictions be provided by Dr. Wilkinson. He wrote, "The prevailing factor for her current symptoms is her age related degenerative changes and not her described injury."⁵ Dr. Prohaska recommended any further treatment related to claimant's knees be billed to her regular insurance.

Claimant returned to Dr. Wilkinson on November 12, 2014. After performing a physical examination and reviewing Dr. Prohaska's evaluation, Dr. Wilkinson determined claimant had some significant preexisting osteoarthritis of her left knee, and any minor aggravation of her symptomatology by the work incident would not have occurred without the presence of the osteoarthritis. Dr. Wilkinson opined claimant's left knee condition was not work-related and advised her to see her primary care physician for further treatment. He noted claimant would be unable to work until her primary care physician issued work restrictions.

Dr. Pedro Murati, a board certified independent medical examiner, evaluated claimant on December 2, 2014, at claimant's counsel's request. Claimant complained of left knee pain with swelling, feelings of instability in the left knee, occasional sharp pains which shoot to the back of the left knee, and the inability to walk more than 10 feet. Dr. Murati reviewed claimant's history, medical records, and performed a physical examination. He noted his agreement with the October 9, 2014, MRI reading and diagnosed claimant with a left ACL rupture. Dr. Murati opined claimant's work-related accident was responsible for the ACL tear, and the ACL tear is the prevailing factor causing permanent and structural change to her left knee. Dr. Murati wrote, "I recommend surgical repair of the ACL. Due to the significant osteoarthritis the only option here could be a total knee replacement."⁶

Dr. Pat Do examined claimant on January 8, 2015, on referral from Dr. Mark Leiker, claimant's primary care physician. Dr. Do did not offer a diagnosis, causation or prevailing factor opinion, but recommended claimant undergo conservative treatment in the form of

⁴ P.H. Trans., Cl. Ex. 10 at 8.

⁵ P.H. Trans., Cl. Ex. 8 at 3.

⁶ P.H. Trans., Cl. Ex. 6 at 3.

physical therapy and injections, or in the worst case, a knee replacement. Dr. Leiker noted on March 11, 2015, that claimant was unable to work and could not return to work without surgery.⁷

Court-appointed physician Dr. Danny Gurba examined claimant on April 9, 2015. Claimant complained of severe left knee pain with persistent swelling and a significant feeling of instability in the left knee. Claimant was minimally ambulatory and presented in a wheelchair. After reviewing claimant's medical records, history, and performing a physical examination, Dr. Gurba diagnosed claimant with preexisting advanced osteoarthritis of the left knee and an ACL tear. Dr. Gurba noted the ACL tear very likely occurred at the time of the work injury and is the prevailing factor for claimant's instability in an otherwise arthritic knee. He wrote, "The only treatment for [claimant's] combination of problems at this point is total knee replacement. Repair or reconstruction of a torn [ACL] in the knee with this degree of arthritic change is not indicated."⁸ Dr. Gurba indicated claimant could return to only sedentary work.

Claimant has not worked since October 7, 2014. Claimant testified she had no problems with her left knee and was able to perform her job prior to the work incident. Respondent did not offer a sedentary position. Claimant currently receives KPERS long-term disability benefits.

PRINCIPLES OF LAW

K.S.A. 2014 Supp. 44-508 states, in part:

(d) "Accident" means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

. . .

(f)(1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.

⁷ See P.H. Trans., Cl. Ex. 11 at 1.

⁸ P.H. Trans., Cl. Ex. 5 at 3.

(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

. . .

(B) An injury by accident shall be deemed to arise out of employment only if:

(i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and

(ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

(3)(A) The words “arising out of and in the course of employment” as used in the workers compensation act shall not be construed to include:

(i) Injury which occurred as a result of the natural aging process or by the normal activities of day-to-day living;

(ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;

(iii) accident or injury which arose out of a risk personal to the worker; or

(iv) accident or injury which arose either directly or indirectly from idiopathic causes.

K.S.A. 2014 Supp. 44-510h(a) provides:

It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicine, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁹ Moreover, this review of a

⁹ K.S.A. 44-534a; see *Quandt v. IBP*, 38 Kan. App. 2d 874, 173 P.3d 1149, rev. denied 286 Kan. 1179 (2008); *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, rev. denied 271 Kan. 1035 (2001).

preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2014 Supp. 44-551(l)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.¹⁰

ANALYSIS

1. Did claimant sustain a personal injury by accident arising out of and in the course of her employment with respondent?

The Board has found work-related injuries resulting in a new physical finding, or a change in the physical structure of the body, are compensable, despite claimant also having an aggravation of a preexisting condition. These decisions tend to show compensability where there is a demonstrated physical injury above and beyond an aggravation of a preexisting condition.¹¹

In this case, the court-ordered medical examiner opined claimant suffered a tear of her left ACL when she twisted and felt a pop in her knee on October 7, 2014. The ALJ chose to give more weight to Dr. Gurba, excluding the conflicting opinions of Drs. Murati and Prohaska, and finding Dr. Wilkinson's opinions to be inconsistent. Based on Dr. Gurba's opinions, the ALJ found the ACL tear to be a change in the physical structure of the body directly related to the work-related injury. The undersigned agrees.

2. Is claimant's injury by accident the prevailing factor causing her need for medical treatment?

Dr. Gurba wrote that the only treatment for claimant's ACL tear is a total knee replacement. In this case, the accidental injury was the prevailing factor causing claimant's ACL tear. Because of her preexisting degenerative arthritis, the only treatment reasonably necessary to cure and relieve claimant from the effects of the work injury is the knee replacement. In a similar case, a Board Member affirmed an order granting medical treatment where a torn medial meniscus could not be treated without a knee replacement.¹² The undersigned finds claimant's injury by accident is the prevailing factor causing her need for medical treatment.

¹⁰ K.S.A. 2014 Supp. 44-555c(j).

¹¹ See *Edgecomb v. U.S.D. 290*, No. 1,072,121, 2015 WL 5462038 (Kan. WCAB Aug. 31, 2015).

¹² See *Folks v. State of Kansas*, No. 1,059,490, 2012 WL 4040471 (Kan. WCAB Aug. 30, 2012).

CONCLUSION

Claimant sustained a personal injury by accident arising out of and in the course of her employment with respondent on October 7, 2014. Claimant's personal injury by accident is the prevailing factor causing her need for medical treatment.

ORDER

WHEREFORE, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge Gary K. Jones dated July 13, 2015, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of September, 2015.

HONORABLE SETH G. VALERIUS
BOARD MEMBER

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Gary K. Jones, Administrative Law Judge